

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

XYZ CORPORATION,

Plaintiff,

CASE NO. 1:22-cv-24270-DPG

v.

THE INDIVIDUALS, PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS IDENTIFIED
ON SCHEDULE “A”,

Defendants.

**UNOPPOSED MOTION TO MODIFY *EX PARTE*
TEMPORARY RESTRAINING ORDER**

Defendant WAXMAN SALES LLC, a Texas limited liability company d/b/a Birdrock Home (“Birdrock”), by and through undersigned counsel, and pursuant to Rule 65(b), Federal Rules of Civil Procedure, file this unopposed motion to modify *ex parte* temporary restraining order and in support thereof states as follows:

1. On January 18, 2023, the Court entered an Order Granting *Ex Parte* Motion for Entry of Temporary Restraining Order (the “TRO”) (ECF No. 14).
2. Pursuant to the terms of the TRO, certain third party internet based e-commerce stores, including Amazon (collectively, “e-commerce stores”), are restrained from transferring any funds relating to Birdrock’s ongoing account activity. Order at Sec. IV(4).
3. On February 6, 2023, Plaintiff filed a Notice of Voluntary Dismissal as to Birdrock and certain other defendants (the “Voluntary Dismissal”) (ECF No. 21). On the same day, and pursuant to the terms of the Voluntary Dismissal, the Court entered its Paperless Order dismissing Birdrock from this action (ECF No. 22).

4. Based on the foregoing, an Order modifying the TRO as to Birdrock is warranted.

Indeed, Birdrock has been unable to access funds held by certain e-commerce stores.

5. Birdrock has discussed the contents of this Motion with opposing counsel whom has agreed to the relief sought herein.

WHEREFORE, Birdrock respectfully requests that this Court enter an order modifying the TRO to explicitly reflect that the TRO no longer applies Birdrock and any other and further relief deemed just and proper.

Date: February 6, 2023

Respectfully submitted,

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/s/ Jonathan B. Morton
Jonathan B. Morton
Florida Bar No.: 0956872
Henry Pogorzelski, *pro hac vice*
Stewart Mesher, *pro hac vice* pending
Attorneys for Waxman Sales LLC

CERTIFICATE OF CONFERRAL

Pursuant to Local Rule 7.1, the undersigned hereby certifies that counsel for Birdrock has conferred with counsel for Plaintiff and Plaintiff's counsel has consented to the relief sought herein.

/s/ Jonathan B. Morton
Jonathan B. Morton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 6, 2023, a true and complete copy of the foregoing was electronically filed via CM/ECF system which will send a notice of electronic filing to all Counsel of Record.

/s/ Jonathan B. Morton
Jonathan B. Morton